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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,223	11/09/2001	Ronnie G. Gipson	01-26	9839
Intellectual Property Department Dura Automotive Systems, Inc. 2791 Research Drive Rochester Hills, MI 48309			EXAMINER MAH, CHUCK Y	
			ART UNIT 3677	PAPER NUMBER
			MAIL DATE 02/25/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/045,223

Applicant(s)

GIPSON, RONNIE G.

Examiner

Chuck Mah

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 17-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-15 and 17-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. In claim 1, lines 4-13, it cannot be understood what components are in fact parts of "an attachment member". More specifically, it cannot be understood whether "a polymeric member" is part of the "attachment member" or is an independently defined element because lines 4-5 contradict with lines 10-11 of the claim. From lines 4-5, "the attachment member including:..." suggests that all three members (the fixed member, the pivot member and the polymeric member) are parts of the "attachment member", and line 4 of the claim states "an attachment member adjacent the inner surface", not attached to the inner surface. However, lines 10-11 address that the polymeric member (part of the attachment member) is to "attach the pivot member to the windowpane". Since the polymeric member is part of the attachment member, it should have been "adjacent" the inner surface. Therefore it is unclear how "a polymeric member" is structurally and functionally related to the "attachment member".
4. In claim 1, line 9, it is not clear what is being defined as "a hinge joint". Is the "hinge joint" a structural element in which both the "pivot member" and the "fixed

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member" are attached, or a joint defined by the coupling of both "pivot member and "fixed member"?

5. Further in claim 1, lines 10-12, it is not clear how a polymeric member, being molded about a portion of the pivot member, is able to allow the pivot member to pivot. That is, the relationship between the pivot member and the polymeric member is not clearly defined. Note similar errors in claims 9 and 17.

6. Claim 4 is confusing. The elements being claimed do not match the structure as shown. Apparently, "fixed member" (line 2) should be "pivot member" and "pivot member" (line 3) should be "fixed member".

7. In claim 6, lines 1-2, "the the" should be "the" and "pivot member" should be "fixed member". "fixed member" (lines 3-4) should be "pivot member". Further, lines 3-4, it cannot be understood how "an arcuate surface" is related to "a support portion" stated in claim 1. Is the "arcuate surface" part of the "support portion" or an additional structure?

8. In claim 7, line 1, "fixed member" appears to be "pivot member". The offset rod in fact is part of the pivot member.

9. In claim 9, line 4, it is not clear what is being defined as "a hinge joint" structurally.

10. Claim 9 is further rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: at least the components of "a hinge joint", and a structural relationship between the polymeric

member and the joint to ascertain a complete, operable hinge to perform hinging. Also note that "pivot axis" is a mere reference line, not a tangible structure. Without sufficient structure to support the intended function, the invention as claimed raises uncertainty of operability.

11. Further in claim 9, line 9, it is unclear what "one side of the windowpane" is referring to. Note similar error in claim 17, line 7.

12. Claim 13 does not provide sufficient clarity to structurally link the claim to the base claim 9. More specifically, it cannot be understood exactly what "a second hinge member", provided by the polymeric member, is referring to and how it is structurally related to both the "polymeric member" and the "hinge member". Note that the disclosure does not state that the polymeric member provide any second hinge member. Further, "the hinge member adjacent to the inner surface" does not have sufficient antecedent basis.

13. In claim 14, it is unclear what "a reinforcement plate is referring to and how it is related to other elements such as "hinge joint", "hinge member", "second hinge member", and "polymeric member" to perform its intended reinforcing.

14. In claim 18, line 2, "hinge member" does not match its antecedence. Further, line 3, it is unclear how "a hinge joint" is related to "a hinge" of claim 1.

15. In claim 19, line 2, "claim 15" should be "claim 18".

16. In claim 20, lines 2-3, it cannot be understood, structurally and functionally, what "the hinge joint...adjacent the cylindrical member" is meant. As best as understood from claim 18, the "cylindrical member" is part of the "hinge joint". Now, addressing the

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"hinge joint" as being adjacent the "cylindrical member", which is part of the joint itself, does not make sense.

17. Claim 21 fails to further limit the subject matter of claim 17. From claim 17, it is understood that the "hinge" and "the "polymeric member" are defined as two different elements. Later claim 21 claims that the polymeric member forms part of the hinge.

Claim 21 contradicts with the limitation stated in claim 17.

Double Patenting

18. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

19. Claims 1-15 and 17-21, as best as understood, are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-22 of U.S. Patent No. 7,100,328. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are but different definitions of the

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same subject matter, vary in breadth or scope of definition as set for the in MPEP 806.03.

20. Claims 9, 12, 17 and 21, as best as understood, are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-22 of U.S. Patent No. 7,024,822. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are but different definitions of the same subject matter, vary in breadth or scope of definition as set for the in MPEP 806.03..

Claim Rejections - 35 USC § 102

21. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

22. Claims 9-15, as best as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Suman et al. (4,529,157). Suman et al. shows a windowpane (inherent structure), a hinge member (16), a polymeric member (20) molded about the hinge member to attach the hinge member to one side of the windowpane (the interior of the vehicle), a stud member (15) offset from the pivot axis of hinge member (16), a second member (40), and a reinforcement plate (44) including an arcuate portion cradling the hinge member (see figure 8, at least the opening of 44 cradling the hinge member 16). Note that claim 12 is functional and given no patentable weight.

23. Claims 9, 12, 13 and 17, as best as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Morgan (4,363,191). Morgan has a windowpane

(2), a hinge member (6), a polymeric member (7), and a second hinge member (40). A "pivot axis" is defined by a point where the two broken lines in figure 2 meet.

Response to Arguments

24. Applicant's arguments with respect to claims 1-15 and 17-21 have been considered but are moot in view of the new ground(s) of rejection. Regarding arguments on the nonstatutory double patenting rejections, it may be true that the patented inventions can be practiced independently. However, a restriction requirement has never been applied to the current application. Therefore, the prohibition against double patenting rejections under 35 U.S.C. 121 does not apply. The rejections are proper.

Conclusion

25. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

26. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chuck Mah whose telephone number is (571)272-7059. The examiner can normally be reached on 5/4-9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on (571)272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Chuck Mah/
Primary Examiner, Art Unit 3677

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